



2024:DHC:2041



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1562/2024 & CM APPL. 6495/2024, CM APPL. 11239/2024, CM APPL. 11240/2024, CM APPL. 12371/2024

KENISHA AGRAWAL MINOR REPRESENTED BY
FATHER AND NATURAL GUARDIAN MR NITIN
AGRAWAL Petitioner

Through: Ms. Anindita Mitra, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Satya Ranjan Swain and
Mr. Vedansh Anand and Mr. Kautilya Birat,
Advocates, for UOI.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **12.03.2024**

1. The petitioner is an Overseas Citizen of India (OCI). She desires to participate in the Asia Pacific Math Olympiad (APMO), the European Girls Mathematical Olympiad (EGMO) and the International Mathematical Olympiads (IMO) which are scheduled to be held from 11 April 2024 to 17 April 2024.

2. The petitioner is aggrieved by the following notice which has been published on the website of the Homi Bhabha Centre for Science and Education (HBCSE), which conducts the preliminary rounds of selection, under the aegis of the Department of Atomic Energy, to decide on the candidates to be sent to represent India in international

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Maths Olympiads:

“As per the orders of the Madras High Court, students with OCI status will not be eligible for selection to the Indian team in the International Mathematical Olympiad (IMO), European Girls’ Mathematical Olympiad (EGMO), Asian Pacific Mathematical Olympiad (APMO). However, such students are provisionally eligible for selection at ALL prior stages, up to and including the International Mathematical Olympiad Training Camp (IMOTC) and European Girls’ Mathematical Olympiad Training Camp (EGMOTC) provided they fulfil all other criteria. They are also provisionally eligible to write the selection tests at the IMOTC and EGMOTC. This policy is subject to revision without prior notice depending on any further orders issued by the courts, or by a competent Government authority”

3. The petitioner, as noted, is an OCI. An Overseas Citizen of India is, despite the somewhat confusing nomenclature, not an Indian Citizen. OCI status is conferred in terms of Section 7A of The Citizenship Act 1955, which reads thus:

“7A. Registration of Overseas Citizen of India Cardholder.—

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder--

(a) any person of full age and capacity,-

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen;”



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4. The petitioner is in fact a citizen of the US and holds a US passport. She has no Indian passport.

5. The petitioner is aggrieved by the denial, to OCIs, of the chance of participating in the aforementioned International Mathematical Olympiads on behalf of India, merely because she happens to be an OCI.

6. Mr. Vedansh Anand, learned Counsel for the respondent pointed out that the participation in the International Mathematical Olympiads is only the final culmination of a five-stage procedure which starts with the candidates qualifying in the Indian Olympiad Qualifier in Mathematics, 2023 (“the IOQM-2023”).

7. He has drawn my attention to the guidelines governing the eligibility of students to write the IOQM-2023 which were brought out in October 2022. The said guidelines have been placed on record by the respondent with the counter affidavit. Insofar as the eligibility of OCI candidates to write the IOQM-2023 is concerned, Clause 2 of the Eligibility criteria reads thus:

“2. The students must be eligible to hold Indian passport. Provisionally, students with OCI cards are eligible to write the IOQM 2023 subject to conditions as explained below:

As per the orders of the Madras High Court, students with OCI status will not be eligible for selection to the Indian team in the International Mathematical Olympiad (IMO), European Girls’ Mathematical Olympiad (EGMO), Asian Pacific Mathematics Olympiad (APMO). However, such students are provisionally eligible for selection at ALL prior stages, up to and including the International Mathematical Olympiad Training Camp (IMOTC) and European Girls’ Mathematical Olympiad Training Camp



(EGMOTC) provided they fulfil all other criteria. They are also provisionally eligible to write the selection tests at the IMOTC and EGMOTC. This policy is subject to revision without prior notice depending on any further orders issued by the courts, or by a competent Government authority.”

8. It is apparent, therefore, that, even at the time when the petitioner undertook the IOQM-2023, she was – or was certainly expected and meant to be – aware of the eligibility criteria applicable, which clearly stated that while OCI students could undertake all prior stages including the International Mathematical Olympiad Training Camp (IMOTC) and the European Girls’ Mathematical Olympiad Training Camp (EGMOTC), they would not be eligible to attempt the ultimate final Olympiad. It is in full knowledge of this handicap that the petitioner undertook the examination and participated in the selection process.

9. Mr. Anand also drew my attention to the guidelines governing the EGMO 2024, Clause 2.2 of which reads thus:

“2.2. A country’s Contestants should normally be citizens or residents of that country, and *should be selected through that country’s national Mathematical Olympiad or equivalent selection programme*. Contestants must have been born less than twenty years before 1 April in the year of participation at the EGMO. Contestants must have been normally enrolled in full-time primary or secondary education on or after 1 December in the year prior to the EGMO, or, in the case of home-schooled students, must not have received a high-school diploma (or equivalent), and must be working toward such a credential on 1 December.

In special circumstances the EGMO Board can approve minor deviation from these rules for specific countries on request. Information on deviations must be available to other participating countries.”

10. A reading of Clause 2.2 of the condition governing the EGMO



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24 indicates that while the opening words of the clause entitled participation both to citizens and residents of a country, the clause immediately thereafter requires the candidate to be selected *through that country's National Mathematical Olympiads*. As such, the conditions governing the INMO *ipso facto* stand incorporated by reference to Clause 2.2 of the conditions governing the entitlement to write the EGMO.

11. Ms. Anandita Mitra, learned Counsel for the petitioner points out, at this juncture that, till last year, the petitioner and her brother had been permitted to participate in the International Maths Olympiad.

12. To a query from the Court, Mr. Vedansh Anand submits that the rule position was the same even at that point of time. If, therefore, the petitioner was extended the benefit which the Rule does not permit, that cannot constitute a basis for the court to perpetuate the mistake.

13. Apropos the impugned condition, Ms Mitra submitted that, though she was not questioning the correctness of the decision of the High Court of Madras to which Clause 2.2 of the Eligibility conditions governing the IOQM *supra* makes reference, she was disputing the correctness of the manner in which the said judgment has been interpreted and applied in the present case, and particularly to her client.

14. It becomes necessary, therefore, to refer to the decision of the High Court of Madras, to which Clause 2.2 of the Eligibility



Conditions governing the IOQM makes reference.

15. The decision of the High Court of Madras to which Clause 2.2 of the Eligibility Conditions of the IOQM makes reference, was passed in WP (C) 7524/2018 (*Raghuram v. Union of India & Ors¹*) on 13 April 2018.

16. Ms. Mitra was candid enough to concede that the dispute in *Raghuram* was identical to the present dispute. The petitioner Raghuram before the High Court of Madras was also an OCI who was aspiring to participating in the International Mathematical Olympiads. The communication dated 1 March 2018, which Raghuram had called into question, denied him the right to even participate in the selection process leading upto to the International Mathematical Olympiads. The High Court, in the concluding paragraphs 10 and 11 of its judgment held thus:

“10. The issue in the present case is with regard to education, which was considered by the Karnataka High Court and an order was passed. In fact, apart from the notification of the year 2005, there was a separate notification in the year 2009, wherein the parity with non-resident Indians in respect of fees provisions etc., had been considered. In terms of the notification dated 11.04.2005, which had been issued pursuant to Section 7-B of the Citizenship Act, 1955 and taking note of Article 11 of the Constitution of India, I am of the view that the petitioner will have to succeed and the impugned communication dated 01.03.2018 has to be interfered with, where there is a bar to the candidates not having Indian Passports for participation in the International Mathematical Olympiad selection.

11. Hence, the respondents are directed to include the name of the minor petitioner in the list of selectees for the International Mathematical Olympiad Training Camp and allow him to attend the camp scheduled from 18.04.2018 to 16.05.2018. *However, with*



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regard to the participation at International Mathematical Olympiad, the principle laid down in the decision dated 24.06.2015 passed by this Court in W.P.Nos.2559 of 2011 and 11431 to 11433 of 2015, will apply."

(Emphasis supplied)

17. A conjoint reading of the aforesaid two paragraphs reveals that, while the High Court of Madras had clearly held that an OCI candidate was entitled to participate in all rounds of the selection process leading up to the ultimate International Mathematical Olympiads, insofar as actual participation in the Olympiads was concerned, the principle laid down in the earlier decision dated 24 June 2015, of the High Court of Madras, in WP 2559/2011 and connected cases was held to apply.

18. Ms. Mitra's contention is that there was, therefore, no categorical direction by the High Court disentitling OCI candidates from appearing in the final Mathematical Olympiads and that the matter had to be decided on the basis of the earlier judgment dated 24 June 2015 of the High Court of Madras in WP 2559/2011 and connected cases.

19. That, then, necessitates reference to the decision in WP 2559/2011 and connected cases.

20. That decision has subsequently been reported as ***G. Venkatesh v. Bridge Federation of India***².



21. G. Venkatesh (hereinafter referred to as “Venkatesh”) was, like the present petitioner, an OCI. He wanted to participate in the World Bridge Championship and the World Bridge Team Championship, conducted under the aegis of the World Bridge Federation (WBF). Being an OCI, Venkatesh was not permitted to participate in the said championship, resulting in his moving the High Court of Madras for permission to do so, though he was permitted to participate in the National Championships/Qualified Events.

22. The High Court of Madras, after a careful perusal of Articles 9 to 11 of the Constitution of India and various provisions of the Citizenship Act as well as the notifications issued thereunder, relied on the following passages from the judgment of this Court in *Karm Kumar v. U.O.I.*³, which followed the earlier decision of the Supreme Court in *State Trading Corporation of India Ltd. v. CTO*⁴:

“25. The very wording of Section 7B of the Act⁵ indicates that what is meant to be granted to OCIs is a limited right. Secondly, it

³ 172 (2010) DLT 571

⁴ (1964) 4 SCR 99

⁵ 7-B. **Conferment of rights on Overseas Citizen of India Cardholder. –**

(1) Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India –

- (a) under Article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
- (b) under Article 58 of the Constitution for election as President;
- (c) under Article 66 of the Constitution for election as Vice-President;
- (d) under Article 124 of the Constitution for appointment as a Judge of the Supreme Court;
- (e) under Article 217 of the Constitution for appointment as a Judge of the High Court;
- (f) under Section 16 of the Representation of the People Act, 1950 in regard to registration as a voter;
- (g) under Sections 3 and 4 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;



is a statutory right and not a fundamental or constitutional right. The grant of the limited right is by the central government by notification under Section 7B of the Act. Therefore what right is granted depends on the policy of the central government. It is not automatic on the attaining of the status of an OCI. There cannot be a presumption that a right that is not taken away by a notification is deemed to have been granted. On the other hand Section 7B makes it clear that only those rights that are specifically granted by a notification issued by the central government in exercise of its powers under Section 7B(1) of the Act are available to an OCI. The legislative intent appears to give the government flexibility in changing its policy from time to time. It might, depending on the circumstances, change its policy and decide to withdraw a right granted to an OCI by issuing a notification to that effect. Incidentally, there is no challenge to the validity of Section 7B of the Act which permits this.

34. As far as this Court can appreciate, the judgment in **Sorab Singh Gill v. Union of India**⁶ turned on the interpretation of the words-educational fields occurring in the notification dated 11th April 2005. The reasoning appears to be that the participation in sporting events by a student in school forms an integral part of education. This Court is unable to read the above notification dated 11th April 2005 issued under Section 7B of the Act as anything more than granting parity to the OCIs with NRIs in-economic, financial and educational fields".

In the context of educational field what it connoted was that if an NRI was granted admission to educational institutions in India, under a quota meant for NRIs, then an OCI would equally be eligible to be considered under the said quota. The intention was not to permit OCIs to represent India in international sporting events. An OCI need not be a student studying in India at all. An OCI could well be merely a resident of a foreign country of which he or she is a passport holder. The right to represent India in an international sporting event does not, in the considered view of this

(h) under Sections 5, 5-A and Section 6 of the Representation of the People Act, 1951 with regard to the eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf, specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

⁶ AIR 2010 P&H 83

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Court, flow from the above notification dated 11th April 2005. Limited scope of interference in policy decisions.

39. *This Court is of the view that the policy decision taken by the Government of India as announced on 26th December 2008, as subsequently clarified on 12th March 2009, restricting the right to represent India in international sporting events to Indian passport holders, cannot be said to be arbitrary, irrational or unreasonable. There is a justification in insisting that only Indian passport holders should represent India in an international sporting event. Those with foreign passports obviously owe their allegiance to the country of which they hold the passport. As long as the policy of the Government of India does not recognize dual citizenship in all aspects, this Court cannot accept the submission that even foreign passport holders should be permitted to play for India in international sporting events. Ultimately the decision whether Indians alone should be allowed to represent India in an international event is a matter of policy of the Government of India. The scope of the powers of this Court under Article 226 of the Constitution of judicial review of such policy decision is extremely limited.*

40. *It is perfectly possible that only Indian passport holders are allowed to represent India in international sporting events whereas national events are thrown open to both OCIs and PIOs. This Court finds nothing unreasonable or irrational in these two distinct policies: one for the national tournaments and the other for international tournaments.*

41. The contention that the entire policy has been made by the Union of India only to victimize Karm Kumar needs only to be stated to be rejected. This submission at best can be termed as 'extraordinary'. It is no doubt true that the said policy came to be framed as a result of the order passed in the Writ Petition (C) No. 3049 of 2008 filed by Karm Kumar in this Court. However, it is quite a different thing to say that the policy has been framed only to victimise Karm Kumar. The said policy has a uniform application to all OCIs and does not single out Karm Kumar for a different treatment.

42. The submission that the policy decision should be announced only by way of a notification proceeds on an erroneous reading of Section 7B(1) of the Act. A notification is required only where it is proposed to confer a right on an OCI. The impugned communications do the opposite. They clarify the policy decision not to grant OCIs the right to represent India in international tournaments.”



(Emphasis supplied)

The passage from *State Trading Corporation*, on which the High Court of Madras, in *G. Venkatesh*, placed reliance, read thus:

“But the question still remains whether nationality and 'citizenship are interchangeable terms.-' Nationality' has reference to the jural relationship which may arise for consideration under international law. On the other hand 'citizenship' has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence, all citizens are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political rights as distinguished from nationals, who may not enjoy full political rights and are still domiciled in that country (vide P. Weis-Nationality and Statelessness in International Law pp. 4-6; and Oppenheim's International Law, Vol. I. pp. 642, 644).”

23. Having referred to these decisions, the High Court of Madras observed, in para 21 of the report in *G. Venkatesh*, that this Court had, in its decision in *Karm Kumar*, “concluded that OCI or a person of Indian origin cannot claim any right to represent India in any international events.”

24. Holding that the peripheries of the jurisdiction of the High Court were limited and restricted to cases in which the respondent was acting without jurisdiction, or does not act in good faith, or acted in violation of the principles of natural justice, and keeping in mind the fact that the Constitution of India and the Citizenship Act conferred OCIs only certain limited rights, the High Court of Madras declined to interfere in the matter. Para 29 of the decision reads thus:



“29. It is also well settled position of law that this Court cannot sit as a Court of Appeal of the decision of the first respondent and interference is warranted, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. In the light of the Constitutional provisions coupled with the provisions of the Citizenship Act that the Overseas Indians are having certain limited rights and privileges, this Court cannot interfere with the impugned communication issued by the first respondent.”

25. *G. Venkatesh*, in the opinion of this Court, enunciates the correct legal position.

26. Though it is true that Venkatesh, the petitioner before the High Court of Madras, desired to participate in the World Bridge tournaments and the petitioner in the present case is seeking to participate in the International Maths Olympiads, I am of the opinion that the difference between the two cases is more one of form than of substance. Though Ms. Mitra sought to emphasise the fact that the Maths Olympiad fell within the parameters of education as contradistinguished from bridge, which was a sporting event, it might not be possible or permissible for this Court to seek to distinguish the decision in ***G. Venkatesh*** on that ground. Participation in sporting events has its own importance in the overall assimilation of a person's character and personality. In a sense, participation in sporting events is also indirectly educative.

27. That apart, a holistic reading of the decision in ***G. Venkatesh*** discloses that the High Court of Madras has not restricted its observation to the limited sphere of the right to participate in the bridge tournament with which it was concerned. The observations of



the High Court of Madras generally examined the right of OCIs to participate in international events and, as already noted, the High Court of Madras has understood the decision of this Court in ***Karm Kumar*** as specifically holding that “OCI or a person of Indian origin cannot claim any rights to represent India in any international events.”

28. This finding is clearly not restricted to the sport of bridge but is omnibus in nature.

29. That apart, in ***Raghuram***, the High Court of Madras was concerned specifically with a candidate who wished to participate in the Maths Olympiad. The facts of that case are identical to the case at hand. The High Court arrived at a conscious decision that the principles of ***G. Venkatesh*** would also apply to the facts in ***Raghuram***. Applying the principle of comity of courts and in the interest of fostering certainty in the law, it would not be either apposite or appropriate for this Court to now revisit the decision in ***Raghuram*** or ***G. Venkatesh***, to arrive at a contrary finding. Besides, the decisions themselves are, in my view, unexceptionable.

30. The respondent cannot, therefore, be faulted for having followed the judgment of the High Court of Madras in ***Raghuram*** and, on that basis, not permitted participation of OCIs in the final International Maths Olympiads.

31. Apart from this, it is also clear that the petitioner was well aware, from the very beginning, when she undertook the IOQM that



OCIs could not participate in the final Olympiad examination. It is with full awareness and recognition of this fact that the petitioner chose to undertake the IOQM. Courts have often held that having undertaken a chance at an examination, or in an interview, a candidate cannot later seek to question the rules applicable to that examination.

32. Ms. Mitra has sought to place reliance on the judgment of the Supreme Court in *Anushka Rengunthwar v. UOI*⁷. Apart from the fact that the petitioners before the Supreme Court in *Anushka* were also OCIs, there is no similarity between that case and this. What was in the balance in *Anushka* was the right to acquire the MBBS degree by attempting the NEET-UG examination. The question before the Supreme Court, as noted in para 1 of the report was whether, when Non-Resident of India (NRIs) were permitted to appear in the examination, OCIs could legitimately have been restrained from doing so.

33. The Supreme Court ultimately held that OCIs could not be treated differently from NRIs, in the matter of appearing in the NEET examination.

34. There is a qualitative difference between the right to attempt the NEET, which is fundamental to the academic progress and advancement of a person, as well as to his right to pursue the medical profession, and the right to undertake an International Maths Olympiad. The International Maths Olympiad is, unlike the NEET, at the end of the day a tournament. Though it might form part of the



overall academic growth of the student who attempts the Olympiad, the right to attempt an Olympiad can hardly be compared with the right to attempt the NEET and, thereby, acquire a primary medical qualification which would enable the person concerned to practice as a doctor in this country. They are as alike as chalk and cheese.

35. The Supreme Court has time and again cautioned on reliance being placed on decisions rendered by it oblivious of the facts and circumstances in which they are rendered. One may refer, in this context, to *State of Haryana v. A.G.M. Management Services Ltd*⁸, among several others.

36. In my considered opinion, there is no similarity whatsoever between the dispute in controversy before the Supreme Court in *Anushka* and that which is before the Court in the present case.

37. The principle in *Anushka*, that OCIs could not be discriminated vis-a-vis NRIs in the matter of attempting the NEET for further advancement in the professional career of the student concerned by enabling him to become a doctor cannot, in my opinion, be parallelised to the right of the petitioner to undertake the Maths Olympiad.

38. There is, moreover, a fundamental and intelligible differentia between the petitioner and other persons who reside in India and are entitled to undertake the maths Olympiad. The petitioner is not an



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Indian citizen. This by itself constitutes an intelligible differentia between the petitioner and citizens of this country who are entitled to undertake the maths Olympiad. Students who attempt an international Olympiad represent the country. They represent its intellectual wealth. Success in the Olympiad augments the country's intellectual reputation and represents the country's intellectual strength in the global firmament. There is, therefore, an integral inter-connect between the requirement of the student being a citizen of this country, and the right to participate in the Olympiad.

39. Moreover, insofar as this right is concerned, there can be no difference between the petitioner and any other foreign citizen. If the petitioner is to be allowed to undertake the Maths Olympiad, every foreign citizen, who is residing in India for a considerable period of time, would be entitled to the same benefit.

40. There is, therefore, a justifiable reason for not permitting non-citizens to represent India in International Maths Olympiad, and the decision cannot, therefore, be treated as either arbitrary or taken without proper application of mind.

41. Besides, as has been correctly held by the High Court of Madras in *G. Venkatesh*, the decision as to who should be permitted to attempt the Olympiad is a policy decision. Participation in international Maths Olympiads is handled by the Department of Atomic Energy, which has outsourced the task to the Homi Bhabha



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Centre for Science and Education. The decision is, therefore, one taken at the executive and governmental level. Administrative and executive decisions dealing with academic matters ought not, ordinarily, to constitute subjects of judicial interference unless they are so arbitrary that no court can in its right mind tolerate the decision.

42. I do not feel that the decision not to allow OCIs to participate in the International Maths Olympiad can be said to so arbitrary as to justify judicial interference.

43. For all the aforesaid reasons, this writ petition is found to be devoid of merit. It is, accordingly, dismissed with no orders as to costs.

C. HARI SHANKAR, J.

MARCH 12, 2024

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